<u>Appn. Number 09/625,017</u>   <u>(Levine, David)</u>   <u>GAU 3621</u>   <u>Amnt. C</u>   8

REMARKS

No Motivation to Add Sampling to Logan

There is no motivation to modify Logan to include sampling. Logan does not need to sample, because he already measures the amount and content of each user's use for billing purposes. Since Logan already knows each user's use (and *must* know it in order to bill each user for his individual use), sampling would provide Logan no benefit. Thus, he would have no reason to use it.

Said another way, if you're already tracking the content and amount of each user's use for billing purposes, you don't need sampling to divide the royalties. In fact, if Logan based rights holder payments on sample data, when he had the actual data in hand, he would leave himself open to a lawsuit by the rights holders.

Amended Claims 1 and 20 Distinguish the Present Invention from the Logan and Daniele References

As discussed in the 9/3/03 interview, even if Logan and Daniele were combined, amended Claims 1 and 20 distinguish the invention from such a combination. Neither Logan nor Daniele, nor therefore a combination of Logan and Daniele, disclose dividing the subscription fees of the plurality of users based on the updated metric which comes from the <u>single user or small group of users making up the sample</u>. This subscription fee division is distinctly defined in Element Four of amended Claims 1 and 20.

This distinction derives from a fundamental difference between Daniele's sampling and the invention's sampling. Daniele's sampling uses part of a single user's use as a <u>surrogate for the entire use of the single user</u>. That is, the use of a single user is sampled to determine the content of that use, and then that content is applied to the entire use of the single user to determine how to divide the single user's fees among the rights holders (see Col. 1-2 & Fig. 1).

In contrast, the invention's sampling uses the entire use of a <u>single user</u> as a surrogate for the use of the entire population using the resource. The use of a single user is not sampled, as in Daniele. Instead, the content of the use of a single user, or a small group of users, serves as a surrogate for the content of the use of the entire user population.

Appn. Number 09/625,017   (Levine, David)   GAU 3621   Amnt. C   9
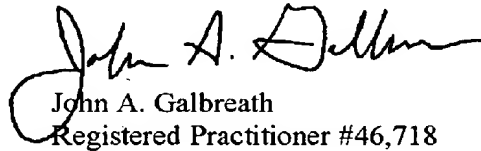
Finally, since independent claims 1 and 20 now define patentably over the prior art, the dependent claims in the application also define patentably.

CONCLUSION

For all of the above reasons, Applicant submits that the claims are now in proper form, and that the claims all define patentably over the prior art. Therefore Applicant submits that this application is now in condition for allowance, which action they respectfully solicit.
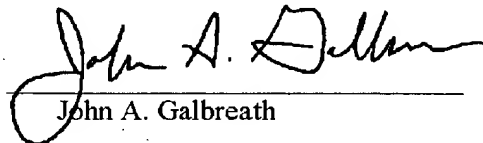
Very respectfully,

John A. Galbreath
Registered Practitioner #46,718

2516 Chestnut Woods Court
Reisterstown, MD 21136
Tel. (410) 666-7274

Certificate of Fax Transmission: I certify that on the date below, this document and referenced attachments, if any, was faxed to the U.S. Patent Office at 703-872-9306.

23 December 2003

John A. Galbreath